

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD) No.4564 of 2015

And

M.P.No.1 of 2015

Ingerit Leena

... Petitioner

Vs.

Vepa K.Sadasivam (died)

1.B.Ganga Durai

2.B.Ramakrishnan

3.E.Nalliyappan

4.Tmt.Swarna

5.S.Sumanth

6.Tmt.Sailaja

7.R.Ramakannan

8.Vepa. A.Murari

9.Kamala E.Sharma

... Respondents

Prayer:

Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.10.2015 made in I.A.No.1374 of 2015 in O.S.No.216 of 2006 on the file of the Hon'ble District Munsif Court at Ambatur and allow the application filed by the petitioner.

For Petitioner : Mr.D.Daniel Ambrose

For Respondents : Mr.K.A.Ramachandran

ORDER

Challenging the impugned order dated 28.10.2015 passed in I.A.No.1374 of 2015 in O.S.No.216 of 2006 by the District Munsif Court at Ambatur, wherein, the prayer for reopening the case for further witness and to issue summons to the Assistant Engineer, Tamil Nadu Electricity Board and Tahsildar, Ambattur came to be dismissed, this revision has been filed.

2.The learned counsel for the petitioner would submit that the petitioner as plaintiff has filed the suit in O.S.No.216 of 2006 for declaration of Title and injunction stating that she purchased the property under the sale deed dated 29.12.2005 and she is in possession. But, the defendants/ respondents herein questioned her Title to the property and on 04.06.2006 the respondents/ defendants attempted to interfere with her possession. Hence, she is constrained to file the suit for declaration and injunction. The defendants filed written statement and contested the same. The matter was posted for arguments. The plaintiff filed application to reopen the case to examine the further witness on her side i.e., the Assistant Engineer, Tamil Nadu Electricity Board and Tahsildar,

Ambattur. But the application was dismissed.

3.The learned counsel for the petitioner would further submit that during the pendency only the patta for the property has been changed in the name of the respondents/ defendants and also they obtained the service connection. He further submitted that during the cross examination of D.W.1 only the plaintiff came to know that patta has been changed from her name to the defendants' name and to prove her case an opportunity must be given to her to put forth her case and hence, she filed the application. That factum was not considered by the Trial Court and the Trial Court dismissed the application. To prove the same, she filed this application for examining the fresh witness. Hence, he prayed for setting aside of the impugned order.

4.Resisting the same, the learned counsel for the respondents submitted that already both side evidence has been closed and when the matter was posted for arguments, the application has been filed and the main aim of the plaintiff is to drag on the proceedings. He further submitted that the plaintiff filed all the documents before the Trial Court and she is very well aware of the

fact that patta has been changed much prior to the filing of the application and before closing her side witness she could very well examine witness before Court and without doing so, after examination of the defendants and after closing of both side oral evidence and when the matter was posted for arguments, she has come forward with the application with a view to drag on the further proceedings. Hence, he prayed for dismissal of the revision.

5.The learned counsel for the respondents further submitted that there is no necessity for examining the Assistant Engineer, Tamil Nadu Electricity Board since on the basis of her own document, the petitioner/ plaintiff has obtained service connection. Hence, he prayed for dismissal of the revision.

6.Heard the rival submissions made on both sides, perused the averment in the typed set of papers and also perused the report from the District Munsif, Ambattur.

7.The averment in the typed set of papers would show that the suit has been filed in the year 2006 for declaration of Title and injunction on the basis of the sale deed dated 29.12.2005 stating

the the respondents/ defendants has attempted to interfere with her peaceful possession on 04.06.2006 and disputed denying her Title and hence, she is forced to file the suit for declaration and consequential injunction. The respondents/ defendants have filed the written statement contesting the same and disputing the Title to the property. It is admitted fact that both side evidence has been over. When the matter was posted for arguments, the present application has been filed and it was dismissed.

8.The report from the District Munsif, Ambattur would show that even the suit was posted for trial from 26.04.2007 to 13.07.2009, only on 13.07.2009, she filed applications for appointment of Commissioner, for amendment of plaint and for injunction and they have been disposed. The application for impleading the eighth defendant was allowed on 25.11.2013. Thereafter, I.A.No.1672 of 2012 was filed by the defendants to reject the plaint and it was dismissed on 07.02.2014. Thereafter, an application was filed to implead the defendants 9 and 10 and it was allowed on 16.06.2014. Subsequently, written statement of defendants 8 to 10 was filed and additional issues were framed and the case was posted for trial on 23.06.2014. Thereafter, the

plaintiff side evidence has been closed. Official witness were also examined and exhibits Ex.A1 to Ex.34 have been marked. In that it was revealed that even though the matter was posted for cross examination of P.Ws., they were not present and it was closed. Subsequently, another application for reopen was filed and they were cross examined and summons were issued to P.W.1. Batta not paid and P.W.1 was recalled and Ex.A35 to Ex.A45 were marked on 25.06.2015 and cross examined on 30.06.2015 and the plaintiff side evidence was closed on 02.07.2015 and posted for the defendants side witness on 06.07.2015 and defendants side witness were examined on 10.08.2015 and closed on 07.09.2015 and it was posted for arguments on 09.09.2015.

9.The above facts submitted by the learned Presiding Officer would show that even though the plaintiff filed the suit, she is not willing to get along with the trial and she filed applications for dragging on the proceedings. Once she filed application for impleading the eighth defendant, after sometime, she filed another application for impleading defendants 9 and 10. It is pertinent to note that those applications were filed once the matter was posted in the list which will show her malafide intention to drag on the

proceedings. The report would further show that the plaintiff herself closed her side evidence on 02.07.2015 and when the matter was posted for arguments, she filed this application to reopen and issue summons to witnesses who are the official witnesses.

10.It is the duty of the plaintiff to prove that she is the owner of the property and she is in possession of the suit property and her possession is legal. Then only, she is entitled for declaration of Title and injunction.

11.The learned counsel for the petitioner would submit that during examination of D.W.1 only, the plaintiff came to know that patta has been changed in the name of the first defendant, hence, to clarify the same, she wants to examine the Tahsildar, Ambattur, but it is well settled fact that the document came into existence during the pendency of the suit and there is no proof or relevancy. Furthermore, it is pertinent to note that as per the argument of the learned counsel for the petitioner that those documents were filed by this petitioner/ plaintiff before the Trial Court. Further as per the argument of the respondents it is known that the petitioner alone has obtained the service connection during the pendency of the suit.

In such circumstances, no purpose will be served to summon the witnesses, issue summon to the witness Assistant Engineer, Tamil Nadu Electricity Board and Tahsildar, Ambattur. This factum has been rightly considered by the Trial Court in inner page 7 of the order.

12. In such circumstances, I do not find any reason to interfere with the order passed by the Trial Court in I.A.No.1374 of 2015 and hence, this revision is dismissed as devoid of merits.

13. Accordingly, this Civil Revision Petition is dismissed and the order dated 28.10.2015 made in I.A.No.1374 of 2015 in O.S.No.216 of 2006 by the Hon'ble District Munsif Court at Ambatur is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.01.2016

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Index: Yes/ No
Internet: Yes/ No

To

1. The District Munsif Court at Ambatur.

R.MALA,J.

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